

## INSPECTIONS AND APPEALS DEPARTMENT[481]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 56, “Fining and Citations,” Iowa Administrative Code.

Item 1 makes a technical correction to rule 481—56.7(135C) by correcting a reference to the Director of the Department of Inspections and Appeals.

Item 2 rescinds current rule 481—56.10(135C), Factors determining imposition of citation and fine, and adopts a new rule on the same subject. The proposed rule clarifies the process by which fines imposed against health care facilities for violations of state rules are calculated. The proposed rule also provides a clear and transparent method for calculating the amount of a state fine for a Class I violation and provides related explanations for the calculations.

The proposed amendment in Item 2 is the result of a kaizen event held by the Department during which the calculation of state fines was reviewed and discussed. Included among the kaizen participants was a representative from a long-term care association. One of the most commonly heard complaints from long-term care providers is the lack of transparency in the calculation of state fines, especially those associated with Class I violations. As a result of the kaizen, a chart was developed that will clearly indicate how fines associated with Class I violations are calculated.

Prior to submission of this Notice of Intended Action, the proposed amendments were shared with providers for comment.

The Department does not believe that the proposed amendments will pose any financial hardship on any regulated entity or individual.

The State Board of Health initially reviewed the proposed amendments at its July 12, 2017, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 22, 2017. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Third Floor, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to [david.werning@dia.iowa.gov](mailto:david.werning@dia.iowa.gov).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135C.14.

The following amendments are proposed.

ITEM 1. Amend rule 481—56.7(135C) as follows:

**481—56.7(135C) Notation of classes of violations.** All rules relating to health care facilities, other than those which are informational in character, shall be followed by a notation at the end of each rule, or pertinent part thereof. This notation shall consist of a Roman numeral or numerals in parentheses. These Roman numerals refer to the class (either class I, class II, or class III) of violation which may be cited by the ~~commissioner~~ director of the department of inspections and appeals when that rule, or a part of a that rule carrying the notation is violated by the facility.

ITEM 2. Rescind rule 481—56.10(135C) and adopt the following new rule in lieu thereof:

**481—56.10(135C) Factors determining imposition of citation and fine.**

**56.10(1)** The director of the department of inspections and appeals may consider evidence of the circumstances surrounding the violation including, but not limited to, those factors set out in rule 481—56.9(135C) when:

- a. Determining whether a violation will be subject to a fine or citation; and
- b. Determining the monetary amount of the penalty to be specified in the citation, when such a fine is authorized to be levied for a particular class of violation.

**56.10(2)** If it is determined that a violation shall be cited as a class I violation, the following chart shall be used by the department when calculating the fine amount. The amount of the fine shall be the sum total of the calculated fine amounts for each factor to be considered. In no circumstance shall the total fine imposed for a single class I violation be less than \$2,000 or more than \$10,000.

Class I Fine Calculation

Factors to Be Considered	Associated Fine and Related Explanation	Calculated Fine
Frequency and length of time the violation occurred, as specified in subrule 56.9(1)	Duration of violation: • If 30 days or less, add \$250. • If more than 30 days, add \$500. Breadth of violation: • One resident impacted, add \$250. • More than one resident impacted, add \$500.	\$
Past history of the facility, as specified in subrule 56.9(2)	Same violation of rule or related rule cited within the past 24 months, add \$500.	\$
Culpability of the facility, as specified in subrule 56.9(3)	Degree of culpability of facility as it relates to the reason the violation occurred, add \$0 to \$500. <sup>1</sup>	\$
Extent of any harm to a resident, as specified in subrule 56.9(4)	• Death, imminent danger or substantial probability of death, add \$6,000 to \$8,500. • Moderate to severe physical harm, imminent danger or substantial probability of moderate to severe physical harm, add \$3,000 to \$7,500. • Minor to moderate physical harm, imminent danger or substantial probability of minor to moderate physical harm, add \$1,000 to \$3,000.	\$
Relationship of the violation to any other types of violations, as specified in subrule 56.9(5)	• One or more related class II or class III violations cited, add \$250. • One or more related class I violations cited, add \$500. <sup>2</sup>	\$
Actions of the facility after the occurrence of the violation, as specified in subrule 56.9(6)	• Good-faith corrective actions taken although violation not appropriately corrected, add \$250. • Corrective actions not taken or the facility failed to notify the director as required, add \$500.	\$
Accuracy and extent of records kept by the facility, as specified in subrule 56.9(7)	Records maintained by the facility contain pertinent inaccuracies or omissions or were unavailable to the department, add \$500.	\$
Rights of the residents to make informed decisions, as specified in subrule 56.9(8)	Residents' rights to make informed decisions were not respected, add \$500.	\$
Whether the facility made a good-faith effort to address a high-risk resident's needs, as specified in subrule 56.9(9)	Evidence indicates the facility did not make a good-faith effort to address a high-risk resident's specific needs, add \$500.	\$
Additional circumstances surrounding the violation, as specified in rule 481—56.9(135C)	Cite any additional circumstances considered and any associated fine amount.	\$
Total Calculated Class I Fine Amount		\$

<sup>1</sup> For example, the culpability of a facility may range from acts or omissions that are inadvertent or negligent to acts or omissions that intentionally disregard known or obvious risks and make it highly probable that the outcome would cause harm to a resident.

<sup>2</sup> For example, a violation related to pressure sores could be correlated to a violation related to the use of restraints or failure to provide incontinent care.